

Claimant argues the all-terrain scooter, which was prescribed by orthopedic surgeon Peter Candelora, M.D., constitutes a form a medical treatment under K.S.A. 44-510(a) which states as follows:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

Dr. Candelora testified that he felt the scooter was reasonable and an appropriate way to keep claimant working. Claimant's job as a craft inspector requires that he spend time in the field, meaning he must walk across uneven ground on a fairly regular basis. Dr. Candelora prescribed the all-terrain vehicle so that claimant could continue working. He did not prescribe the vehicle so claimant would have a way to transport himself to and from medical appointments, therapy appointments or to assist claimant with the activities of daily living. Dr. Candelora acknowledged that, if claimant were not working and just needed to get around socially or for shopping, a motorized wheelchair would be more than sufficient.

Dr. Candelora stated that, if claimant continued to work on uneven soft ground, then it would be beneficial for claimant to have the scooter as he felt claimant may be in jeopardy without this means of transportation.

The Kansas Court of Appeals, in Hedrick v. U.S.D. No. 259, 23 Kan. App. 2d 783, 935 P.2d 1083 (1997), was asked whether a car fell within the definition of "medical treatment". The Court, in discussing K.S.A. 44-510(a), reasoned:

For the purposes of this case, it is not necessary to devise a precise definition of "medical treatment." Certainly, examination, diagnosis, and application of remedies would not encompass the purchase of a car. The natural and ordinary meaning of "medical treatment" is not so broad as to include an automobile purchased to afford an individual "independence in transportation." Moreover, the purchase of a car goes far beyond the limited transportation authorized by 44-510(a). Under the facts of this case, we conclude that medical treatment does not include the purchase of a car.

This conclusion is consistent with those cases which have applied another element of 44-510(a), the requirement that the medical treatment "be reasonably necessary to cure and relieve the employee from the effects of the injury." (Citing Horn v. Elm Branch Coal Co., 141 Kan. 518, 41 P.2d 751 (1935).

In Hedrick, the claimant had reached maximum medical improvement and was seeking reimbursement for the purchase of a larger vehicle as her physician had recommended she obtain a larger vehicle because her physical limitations from the work-related injury made it difficult for her to use her compact car.

Here, it has been recommended that claimant be provided with an all-terrain vehicle, as Dr. Candelora states, in order to keep claimant working. Rather than being medical treatment, the Appeals Board finds this appliance constitutes a vocational rehabilitation appliance.

Had Dr. Candelora prescribed a motorized wheelchair to assist claimant in his everyday activities, the Appeals Board would be more inclined to find the wheelchair would constitute a form of medical treatment necessary to cure and relieve claimant from the effects of the injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated September 21, 2000, granting claimant the prescribed all-terrain scooter, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of April 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

I respectfully disagree with the majority. The test in determining whether equipment is a medical device is whether it relieves the effects of the injury. The all-terrain scooter meets that test. It is uncontroverted that the scooter would assist claimant both on and off

paved surfaces. Conversely, a motorized wheelchair would generally restrict claimant to hard, even surfaces.

Unfortunately, the majority has focused its attention upon whether the scooter would assist claimant in retaining employment. Using that analysis, the majority has determined that the scooter is not a medical device. I believe the majority's analysis is too narrow as it would eliminate any device that could serve a dual purpose, including enhancing someone's ability to work.

The Order granting the scooter should be affirmed.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Gary A. Winfrey, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director